

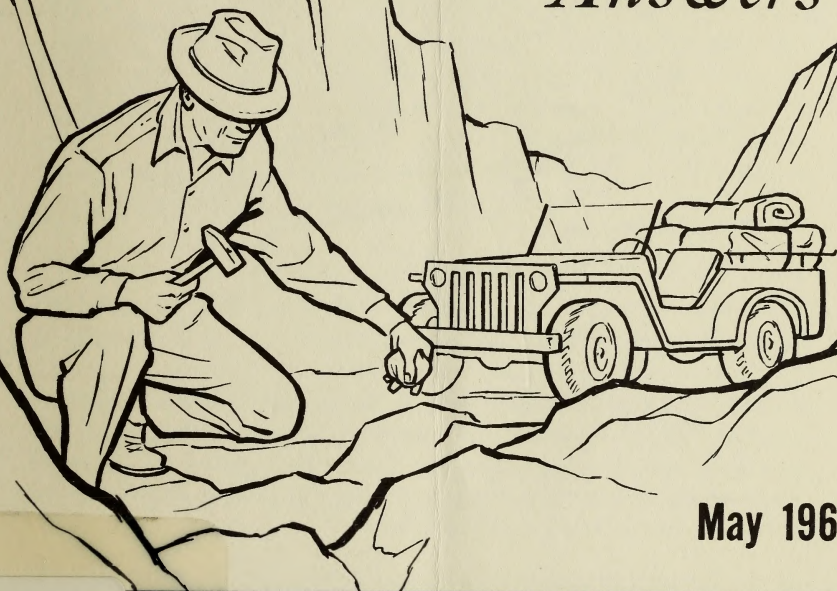
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# MINING CLAIMS

## *Questions and Answers*

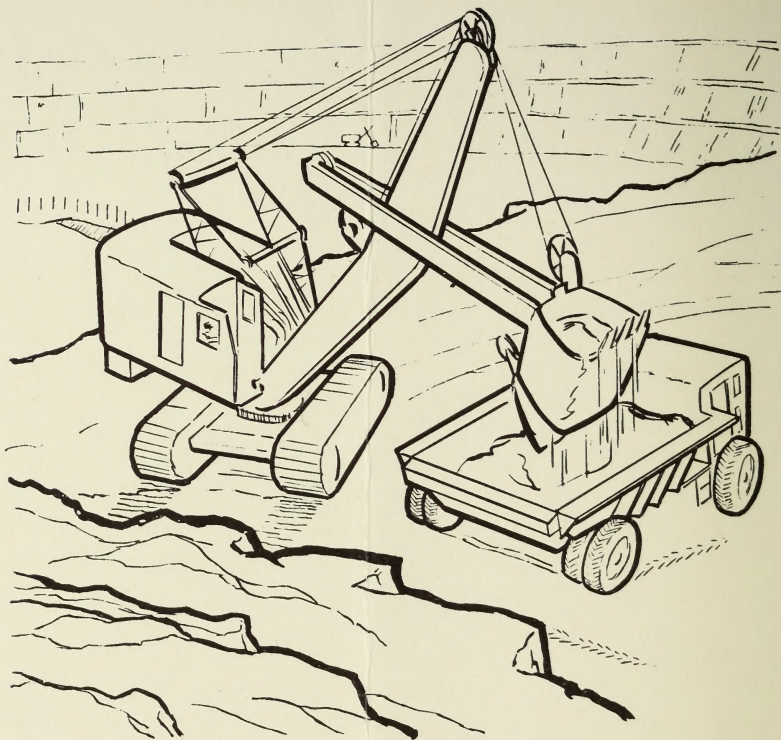


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UNITED STATES DEPARTMENT OF THE INTERIOR  
BUREAU OF LAND MANAGEMENT



Created in 1849, the Department of the Interior—America's Department of Natural Resources—is concerned with the management, conservation, and development of the Nation's water, wildlife, mineral, forest, and park and recreational resources. It also has major responsibilities for Indian and Territorial affairs.

As the Nation's principal conservation agency, the Department of the Interior works to assure that nonrenewable resources are developed and used wisely, that park and recreational resources are conserved for the future, and that renewable resources make their full contribution to the progress, prosperity, and security of the United States—now and in the future.

# Mining Claims—Questions and Answers

**I**n 1872 Congress passed "An Act to Promote the Development of the Mining Resources of the United States." If you wish to file a mining claim on public land this is the law which gives you the right to do so. It is also the law which sets the limits of your rights. In other words, the mining laws, together with the regulations and court decisions which have interpreted it, are the rules of the game. You can't make your own rules. If you want to see the law itself, it can be found in the United States Code, Title 30, Sections 21-54. The regulations can be found in Code of Federal Regulations, Title 43, Section 185.

As principal "housekeeper" of the Federal public lands, the Bureau of Land Management, an agency of the U.S. Department of the Interior, has the primary responsibility of administering the laws and regulations governing the management or disposal of public lands and their resources. The administration of the United States mining laws to "promote the development of the mining resources of the United States" is one of that Bureau's primary responsibilities.

## What is a mining claim?

The words "claim" or "mining claim" have a definite meaning when used in connection with the United States



mining laws. They refer to a particular piece of land, valuable for specific minerals, to which an individual has asserted a right of possession for the purpose of extracting discovered minerals. This right is granted the miner if he meets the requirements of the mining law, and these same laws guarantee him protection for all legitimate uses of his claim. If the requirements of the law have not been met no rights have been gained.

## When should I stake a mining claim?

You want to stake a mining claim? Before you do be sure that a mining claim is what you really want. A mining claim is for one purpose only--to permit the development and extraction of certain valuable mineral deposits.

Don't be misled into believing that staking a mining claim is either a simple or an inexpensive way to obtain a piece of land. The requirements of the mining laws are not easy to meet. Unless you are convinced you can meet these requirements, a mining claim may not be what you are looking for.

If you want land to build a house or summer cabin, a resort, a filling station, a swimming pool, or any other kind of structure, then staking a mining claim is not the way to get the land. There are other laws--the Small Tract Act, the Public Sale Act, and others--under which it might be possible to purchase land from the government for personal, business, or recreational use. An act of particular interest to you, if you have been a "residential occupant" of an invalid unpatented mining claim, was passed in 1962 (Public Law 87-851). Under certain circumstances you may apply to purchase or lease the land your improvements occupy.

## What is a discovery of valuable mineral?

A mining claim may be validly located and held only after the discovery of a valuable mineral deposit.

It is a common misunderstanding among prospectors that if they sink a shaft, which they call a "discovery shaft" or make other mining improvements, and then put up their corner monuments to identify the land, they automatically acquire an interest in the public domain, although there may be absolutely no indication of valuable mineral within the claim, and active prospecting work has stopped. They likewise mistakenly believe that the performance of annual assessment work will perpetuate their "right" to such a claim.

Regardless of the prevalence of this belief, as a matter of law such a location is worthless and no rights have been acquired from the Government.

The courts have established and the Government follows the "prudent man" rule to determine what is a "discovery of a valuable mineral." Under that rule "where minerals have been found and the evidence is of such a character that a person of ordinary prudence would be justified in further expenditure of his labor and means, with a reasonable prospect of success, in developing a valuable mine, the requirements of the statute have been met." Many people have misunderstood this to mean that merely any showing of a mineral, no matter how slight, or a hope or wish for future discovery is sufficient.

This is not correct.

There must be an actual physical discovery of mineral



on each and every claim and this discovery must satisfy the "prudent man" rule. Commercial grade ore is not required but mere traces, isolated bits of mineral or minor indications are not sufficient to satisfy the "prudent man" rule.

## Are there different kinds of mining claims?

Mining claims are of two main types--(a) lodes and (b) placers. Lode claims are located for minerals occurring in veins, fissures or ledges and generally may be considered as including mineral deposits occurring in "rock in place." Placers, on the other hand, generally include minerals occurring in a mass of gravel, sand, or similar unconsolidated material resulting from the crumbling and erosion of solid rocks and containing particles of gold, platinum, or other minerals that have been derived from rocks or veins.

Lode claims are usually rectangular in shape with end lines parallel and are located by metes and bounds (giving length and direction of each boundary line). They are limited by statute to a maximum of 1,500 feet in length by 600 feet in width.

Placer claims, where practicable, should be located by legal subdivision (a legal subdivision is a part of a section, e.g., SE $\frac{1}{4}$ SE $\frac{1}{4}$  Section 10, Township 10 South, Range 20 East, MDM). They are limited to an area of 20 acres per claim per locator. However, two locators may locate 40 acres, and three 60 acres and so on, up to a maximum of 160 acres for eight persons. On unsurveyed land and in certain other circumstances placer claims may be located by metes and bounds.

In addition to lode and placer claims, there are also mill sites and tunnel sites. Further information on these may be obtained by consulting the regulations.

## **What is the difference between a patented and unpatented claim?**

A patented mining claim refers to a piece of ground for which the Federal Government has given a deed or has passed its title to an individual. An unpatented claim is one on which an individual, by the act of valid location under the mining laws, has obtained a right to remove and extract minerals from the land, but where full title has not been acquired from the U.S. Government. The rights under each are quite different.

You may apply for a patent to a mining claim if you wish but it is not necessary to have a patent to mine and remove minerals from a valid claim.

## **What is a mineral?**

In its broadest sense, a "mineral" is any inorganic substance occurring naturally as part of the earth's crust and having a definite chemical composition. In its use in the mining law a mineral is any inorganic substance found in nature and having sufficient value apart from the surrounding earth, to be mined, quarried, or extracted for its own sake or its own use.

## **What minerals may be located?**

Both metallic (gold, silver, lead, etc.) and nonmetallic (gypsum, asbestos, mica, etc.) minerals may be located under the mining law if all requirements are met. In fact, with certain specified exceptions, whatever is recognized as a mineral by standard authorities may be located when the mineral is valuable within the meaning of the law.



Some materials may not be located, but may be purchased from the Government. These include the common varieties of sand, stone, gravel, pumice, pumicite, cinders, and clay. These may be purchased for their fair market value, either at competitive or noncompetitive sales. Since October 1962 petrified wood is no longer subject to location under the mining laws. Small amounts may be removed free of charge by hobbyists for noncommercial use. Larger amounts may be purchased in a manner similar to sand and gravel.

A few other minerals may be leased from the Government, but may not be claimed. These are oil and gas, oil shale, potash, sodium, native asphalt, solid and semi-solid bitumen, bituminous rock, phosphate, coal, and in Louisiana and New Mexico, sulphur. On these minerals, unlike those claimed under the mining laws, a royalty is paid to the Government.

## What rights do I obtain from a mining claim?

If you establish a valid claim, and perform and record annual assessment work required by State law, and meet all other requirements of Federal and State mining laws and regulations, you establish an exclusive right of possession to the area covered by the claim for the purpose of developing and extracting minerals. It is your property, for mining purposes, and, as with other property, it may be sold, inherited, or taxed according to State law. No one else can mine the minerals which you have claimed without your consent. But until you obtain patent to the claim from the Government, you do not hold full title to the land. Your possession is based upon discovery of a valuable mineral and your right to the claim may be questioned or challenged by the Government if it appears your claim lacks discovery or does not meet other requirements of the law. If the



Government's challenge of your claim is successful, the claim is cancelled and you lose all rights to it.

You may use as much of the surface and surface resources of the claim as are reasonably necessary to carry out your mining operations. These uses, however, must be connected with and necessary for mineral development.

On mining claims located since 1955, the Government, prior to issuance of patent, has the right to manage the surface so far as it does not interfere with mining. The Government may manage and dispose of vegetative resources, such as timber and grass, and may manage other surface resources except minerals subject to location. Under certain circumstances the Government may obtain similar rights for claims located prior to 1955.

## **Is there a way I can own the surface as well as the minerals?**

A mining patent or deed received from the Government gives you the exclusive title to the locatable minerals. In most such cases, you will also obtain full title to the land surface and all other resources. If you do obtain full title to the land and minerals you, of course, have the exclusive right to use the surface for any purpose permitted on other land. You should contact the local Bureau of Land Management land office to find out if your mining claim is in an area where you may receive full title to both surface and mineral rights.

The requirements for obtaining a patent are detailed and exacting and must be fully met. The services of an attorney, or engineer, or others fully qualified and familiar with all

phases of discovery requirements and mining law may be desirable prior to submitting an application for patent.

## **Where may I prospect for a valuable mineral deposit?**

There are large areas, mostly in the Western States, where you may prospect for minerals and if a discovery of a valuable mineral is made a mining claim may be staked. These areas are in the States of Alaska, Arizona, Arkansas, California, Colorado, Florida, Idaho, Louisiana, Mississippi, Montana, Nebraska, Nevada, New Mexico, North Dakota, Oregon, South Dakota, Utah, Washington, and Wyoming. They are mostly on public land administered by the Bureau of Land Management, Department of the Interior, or by the Forest Service, Department of Agriculture. You may also locate mining claims on certain patented lands in which the Government has reserved the mineral rights, but you may mine and patent only the reserved minerals in such lands. Care must be taken not to damage surface resources owned by others.

Although approximately 600 million acres of public lands are open to prospecting under the mining law it should be clearly understood that a valid mining claim can be located only after a discovery of a valuable mineral as defined by the "prudent man" rule. Thus, in actual practice valid mining claims may be located and legal rights established only on a relatively small amount of this land. The vast majority of the total acreage probably does not contain valuable minerals. You must determine by prospecting where the areas containing valuable minerals are situated. Only after discovery of a valuable mineral may a valid mining claim be staked.



## Are any public lands closed to mining?

Generally, the national parks and most national monuments are closed to mining, as are Indian reservations, hydro-electric and reclamation projects, military reservations, scientific testing areas, and some wildlife protection areas. Not all national forest lands are open to mining.

These closed areas are said to be "withdrawn" from mining location. The public land records in your local BLM land office will show you which public lands are so withdrawn. It is vitally important to you that you not remove minerals from these withdrawn lands. Such removal would be considered a trespass against the Government and could subject you to penalties.

## How do I go about locating a claim?

You should first visit the local land office of the Bureau of Land Management, Department of the Interior, to determine if the land you wish to claim is open to mining location. If the land is "withdrawn" or closed to location you can establish no rights even if you discover minerals and attempt to stake a claim.

Each land office of the Bureau of Land Management keeps up-to-date land status maps and records of their district which show the current status of all federally owned lands and minerals. These maps and records are available for inspection by the public and a BLM employee will show you how this information is recorded. The office will inform you of the status of any individual tract of land upon request. However, information regarding unpatented mining claims usually is not available in this office. Such claims are

recorded or filed in the County Recorder's office in the county in which the claim is located, and not with the Bureau of Land Management. Usually only information pertaining to patented claims can be obtained from a Bureau of Land Management office.

Remember that vast areas are open to prospecting, but a valid claim may be located only after the discovery of a valuable mineral deposit.

After determining that the land is open to location and after doing sufficient prospecting to determine that it contains valuable mineral, the essential elements in locating a mining claim are: (1) The actual physical exposure or "discovery" of a valuable mineral. (2) Distinctly and clearly marking and establishing the boundaries of the claim on the ground so that it can be readily identified. (3) Posting the notice of location on the claim in a conspicuous place, usually at the place of discovery. (4) Recording an exact copy of the location in the appropriate office, usually the County Recorder's office in the county in which the claim is located. In Alaska the place of recordation is with the District Magistrate.

Except in Alaska, Federal mining law does not require a notice of location to be either posted or recorded. However, all individual States to which the mining laws apply have, by State statutes, required posting and recordation. You should check individual State requirements carefully.

The requirements vary from State to State. Usually a location notice must contain the following information: (1) date, (2) name of locator or locators, (3) name of the claim, (4) whether claim is for lode or placer, (5) mineral claimed, (6) the distance claimed along the course of the



vein, each way from the discovery point and the direction (for lode claims and placer claims located by metes and bounds), or the acreage claimed and the legal description by particular parts of the section, township, and range (for placer claims located by legal subdivisions), (7) a connection by distance and direction as accurately as practicable from the discovery point to some well-known, permanent, and prominent natural object or landmark such as a hill or mountain, bridge, forks of a stream, or road intersection. Where a placer claim is located by legal subdivision, no other tie-in is required.

## How do I mark my claim on the ground?

Federal law specifies only that a claim should be distinctly marked so it can be readily identified. However, each State usually has provided detailed requirements for marking boundaries. These vary from State to State. Generally, as a minimum all four corners of a lode claim or a placer claim not located by legal subdivision, should be marked with posts or stone monuments. For placer claims located by legal subdivision, corner monuments are usually unnecessary.

The point of discovery of both lode and placer claims should be marked by a post or monument. The location notice, giving information about the claim, should be placed in or on this monument.

This procedure identifies and establishes the boundaries of your claim, and is notification to others of your claim. The more clearly the boundaries are marked and State laws adhered to, the less chance your claim will be "jumped" or appropriated by others.

## How do I record my claim?

Each State has established detailed procedures for receiving and recording location notices. These notices usually are filed with the County Recorders' offices in the county in which the claim is located and in Alaska with the District Magistrate.

Location notices are not filed with the Bureau of Land Management except in one or two instances where specifically required by law. In these situations, copies must also be filed in the usual place of recordation as required by State law.

## What else is required to maintain my claim?

One hundred dollars' worth of labor or improvements must be performed on or for the benefit of a claim each year. This is called annual assessment work. This work must be completed on or before 12:00 o'clock noon of September 1 of each year. This proves your active interest in the claim, and must be done to maintain your right to the claim against "jumping" or location by other persons.

Failure to do assessment work will not bring action by the Federal Government to cancel your claim but it will permit others to locate the land you previously held.

You should also record in the County Recorder's office each year a statement that you have performed the annual assessment work. Annual assessment work is not recorded with the Bureau of Land Management.



## **What about State mining laws ?**

As a supplement to the United States mining laws there are also State statutes which specify the manner of locating a claim, marking the boundaries, recording notices of location and annual assessment work, the size of "discovery" pits or shafts and numerous other requirements. These State laws should also be observed. As these laws and requirements vary from State to State you must request additional information from your State officials.

## **How many claims may I stake ?**

There is no limit to the number of claims you may hold, as long as you have made a discovery of a valuable mineral on each one and meet other requirements.

## **Who may stake a claim ?**

Anyone who is a citizen of the United States, or who has declared his intention to become a citizen, may stake or locate a mining claim. This includes minors who have reached the age of discretion, and corporations organized under the laws of any state.

## **May someone else locate a mining claim for me ?**

You may authorize another person, as your agent, to stake or locate a mining claim for you, but the importance of doing everything correctly makes it highly desirable that you do the job yourself, or closely supervise it.

## May I buy a mining claim?

A valid mining claim can be bought and sold, willed or inherited as can any other property. However, if you buy or sell a claim, remember that you acquire or convey only such rights as are authorized by the mining law. A "quit-claim" deed is often used to sell claims, but only such rights as exist can be quit-claimed. If the claim is without a valid discovery or is otherwise defective, it is worthless and it is not made any better by being bought and sold.

A great deal of unwise speculation has resulted from the activities of unethical or misinformed mining claim "promoters" who, for a fee, purport to stake mining claims and do annual assessment work for others. For the most part, the claims are located in areas of rapid expansion and rapidly changing land values. More often than not, these claims have absolutely no value for minerals and if questioned or challenged by the Government may be found to be invalid. These "promoters" are not a part of the mining industry and must not be confused with the legitimate miner or prospector who is diligently prospecting for mineral and who may, on occasion, wish to sell a valid claim to others for development. Through the inducements of these unethical promoters who misrepresent that a mining claim may be used as a site for a weekend cabin or as a hunting lodge, many people have invested their money in worthless claims, perhaps built a house only to discover that the claim which they purchased was not valid. Remember a mining claim, prior to patent, is to be used for mining purposes only.

## May I build a house on a mining claim?

You may build a house or cabin or other improvements



such as tool sheds or ore storage bins, etc., on a valid mining claim if such structures are reasonably necessary for your use in connection with your mining operations.

## **May I operate a store or business on a claim?**

The building or operation of a store, filling station, restaurant, or other commercial business on an unpatented mining claim is clearly against the law. You cannot use the surface of your mining claim for any purpose other than those uses reasonably necessary for a mining operation.

## **Where can I get more information about the U.S. mining law?**

The purpose of this pamphlet is to familiarize the amateur prospector, and others unaware of the details and complexities of mining law, with some of its elementary principals. In so brief a statement many generalities must be made. This pamphlet is not represented as a definitive or complete treatise on any phase of the mining law. It does cover, however, many of the more common misconceptions, and will answer many of the more frequently raised questions.

More information and a copy of the United States mining regulations may be obtained from the following Bureau of Land Management land offices:

Alaska:        Cordova Building, 6th & Cordova Streets,  
                 Anchorage.  
                 516 Second Avenue, Fairbanks.

- Arizona: 3204 Federal Building, 230 N. First Avenue,  
Phoenix.
- California: Federal Building and U.S. Court House,  
650 Capitol Avenue, Sacramento.  
1414 - 8th Street, P. O. Box 723, Riverside.
- Colorado: 677 Gas & Electric Building, 910 - 15th  
Street, Denver.
- Idaho: 323 Federal Building, P. O. Box 2237, Boise.
- Montana: Crum-McKinnon Building, 1245 N. 29th  
Street, Billings.
- Nevada: P. O. Box 1551, Reno.
- New Mexico: 113 Washington Avenue, Santa Fe.
- Oregon: 710 N. E. Holladay, Portland.
- Utah: Darling Building, Third Floor, P. O. Box 777,  
Salt Lake City.
- Wyoming: 2002 Capitol Avenue, Cheyenne.
- Eastern States: U.S. Department of the Interior  
Washington 25, D.C.

## Where can I get information about State mining laws and regulations?

Inquiries should be directed to the appropriate office at the State Capitol for further information on individual State mining laws.



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## How about mining claims on National Forest lands?

Most National Forest lands in the West are open to mineral location, but the locator must comply with the rules and regulations covering the National Forests. Certain acquired lands and others withdrawn from mineral entry under Acts of Congress or Executive Orders are not open to mineral location. National Forests in the East were mostly acquired and are not open to mineral location. Exceptions east of the Plains, include certain lands in the Ouachita, Ozark, and Ocala National Forests. Before prospecting or locating a mining claim on a National Forest, obtain full information from the nearest National Forest office.

It is of interest to those considering the purchase of a mining claim, that practically all existing claims on National Forest land have been processed under the Act of July 23, 1955, and the Government now has the right to manage the surface and surface resources, as prescribed in the act, on most of these claims.



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